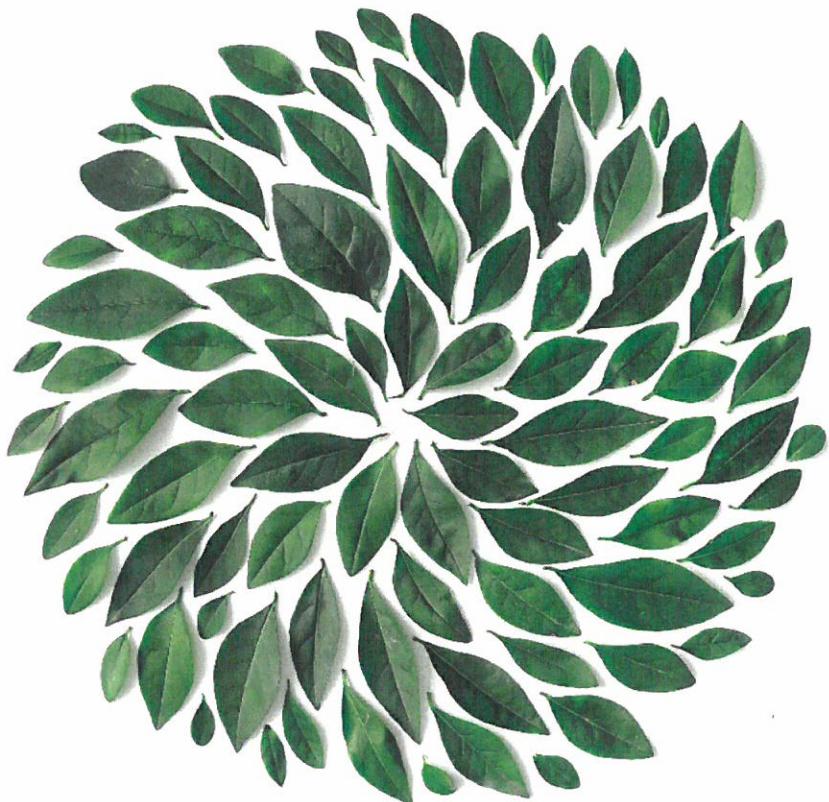


Deloitte.



Symmetry Asset Management Inc.: Allegations of Mismanagement of Funds

November 23, 2020
Privileged and confidential



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November 23, 2020

Privileged and confidential

Dentons Canada LLP
2500 Stantec Tower
10220 – 103 Avenue NW
Edmonton, AB T5J 0K4
Canada

Attention: G. James Thorlakson

Dear Mr. Thorlakson,

Subject: Assistance in the investigation of the allegations of mismanagement of loan proceeds

The attached details our preliminary review and request for further documentation for the pursuit of litigation in the matter of Romspen v Zen Garden et al outlined in Appendix A.

Our findings are based on the scope as described in Section 2 of this report and are subject to the restrictions set out therein.

Should you have any questions or concerns, please do not hesitate to contact me at 403-503-1453.

Yours very truly,

Gina Campbell, CPA, CA, CFF, CFE, DIFA
Senior Vice-President
Deloitte Forensic Inc.

Enclosure

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Symmetry Asset Management Inc. - Privileged and Confidential

1. Background

1.1. Introduction

1. Deloitte Forensic Inc. ("Deloitte Forensic") was retained by Dentons Canada LLP ("Counsel") on behalf of Symmetry Asset Management Inc, Dan White Family Trust, Absolute Environmental Waste Management Inc, Lot 11 GP Ltd, Lot 11 Limited Partnership, Eco-Industrial Business Park Inc, Absolute Energy Resources Inc and Daniel Alexander White (together the "Client") to provide forensic and investigative services with respect to the misappropriation of funds in the matter of a United States Bankruptcy Court Case 20-10410-HCM involving 3443 Zen Garden LP¹ and Alberta Court of Queen's Bench Action 2003 06728.
2. Further to our initial retainer, Counsel specifically requested that we respond to two questions regarding the acts of corruption, fraud and financial misconduct in the case noted above.
3. These questions are as follows²:
 - a. Assuming that September 15, 2020 Emergency Application of the Trustee accurately describes the results of the investigation that the Trustee conducted, is it – in your opinion – likely that Romspen Mortgage Limited Partnership and Romspen Investments Corporation engaged in acts of corruption, fraud, financial misconduct or breaches of fiduciary duty and Partnership in connection with their dealings with Lot 11 GP Ltd, Lot 11 Limited Partnership, Eco-Industrial Business Park Inc, Absolute Energy Resources Inc, Absolute Environmental Waste Management Inc and Daniel Alexandre White?
 - b. Do you believe that there are further documents that would assist in supplementing your opinion? If so, what are those documents?

1.2. Background

4. The Plaintiff, Dan White Family Trust ("The Trust"), is a trust that is settled in Alberta.³ The Trust was established for the purposes of managing and investing the assets of the Trust ("the Trust Assets") in the best interest of the beneficiaries of the Trust.
5. The Trust Assets includes a corporation known as 1468527 Alberta Ltd ("146"). 146 holds a controlling shareholder interest in⁴:
 - a. Absolute Environmental Waste Management Inc. ("Absolute Environmental");
 - b. Eco-Industrial Business Park Inc. ("Eco-Industrial");
 - c. Purple Tree International, Ltd, ("Purple Tree"). Purple Tree owns 50% of the shares of 3443 Zen Garden GP, LLC ("Zen Garden GP"). Zen Garden GP is the general partner of 3443 Zen Garden Limited Partnership ("Zen Garden LP") – a Texas limited partnership;
 - d. Blue Roots International, Ltd ("Blue Roots"). Blue Roots owns 100% of Lincoln 1861 Inc ("Lincoln"). Lincoln owns 74% of the partnership interests within Zen Garden LP.
6. Zen Garden GP and Zen Garden LP (together, "Zen Garden") are were the owners of the real estate development in Austin, Texas. Romspen Mortgage Limited Partnership ("Romspen Mortgage") and Romspen Investments Corporation ("Romspen Investment") loaned money to Zen Garden LP to fund the development of "Austin Development" which was formerly the Mortorola campus in Austin. The land was to be redeveloped into a 110-acre mixed use

¹ SEPTEMBER 15 2020 EMERGENCY MOTION - TRUSTEE (Romspen).PDF

² NOVEMBER 19, 2020 DENTONS LETTER - DELOITTE (Romspen).PDF, page 1

³ MAY 12, 2020 STATEMENT OF CLAIM (Romspen).PDF, pg.1

⁴ MAY 12, 2020 STATEMENT OF CLAIM (Romspen).PDF, pg.2

project to consist of offices, hotels and retail spaces using renewable energy resources, energy-efficient technologies and sustainable design.⁵

7. Eco-Industrial Business Park Inc owns a property that is legally described as⁶:
 - a. Meridian 4 Range 23 Township 53
Section 17
Quarter North East
Containing 64.7 Hectares (160 Acres) more or less
 - b. The land is commonly referred to as Lot 3 or Block 3
8. The loan from Romspen to Zen Garden LP was committed in early 2018 in the amount of \$125 million⁷. Critically, in connection with the Romspen Loan, Romspen agreed to not unreasonable refuse to consent to obtaining a separate, supplemental loan under the Property Assessed Clean Energy Act from another lender ("PACE"). This loan would fund key environmental and energy savings components. A commitment for \$25 million principal PACE loan was obtained but was contingent on written consent from Romspen.⁸ However, this consent from Romspen was never received contributing to the financial starvation of the Austin Development project.
9. We understand that funds were supposed to be provided by Romspen Mortgage Limited and Romspen Investments Corporation (together "Romspen") to support the construction project of Austin Development. However due to the following actions⁹:
 - i) Romspen delayed the funding of draws under the Second Romspen/Zen Garden Loan without justification;
 - ii) Romspen refused to disperse the remaining amounts of the Second Romspen/Zen Garden Loan;
 - iii) Romspen unreasonably refused to consent to Zen Garden LP receiving a PACE Loan
 - iv) Romspen LP and Romspen Investment inserted themselves into the business of operations with Zen Garden LP by:
 - a. Insisting that Zen Garden LP retain Panache Development & Construction, Inc ("Panache") – a company owned and operated by Adam Zarafshani - as the general contractor for the development of the Austin Lands;
 - b. Directly negotiating the construction contract with Panache and by inserting terms that were detrimental to Zen Garden LP into that contract;
 - v) Romspen LP and Romspen Investment became co-developers and co-managers of the Austin Development and a Lender in possession.
10. The above actions caused Zen Garden LP to be assigned into bankruptcy in the State of Texas on April 15, 2020¹⁰.

⁵ MAY 12, 2020 STATEMENT OF CLAIM (Romspen).PDF, pg.2

⁶ NOVEMBER 19, 2020 DENTONS LETTER - DELOITTE (Romspen).PDF, page 2

⁷ MAY 7, 2020 COUNTERCLAIM (Romspen).pdf, page 8, 9, paragraphs 32, 33

⁸ MAY 7, 2020 COUNTERCLAIM (Romspen).pdf, page 8, 9, paragraphs 32, 33

⁹ MAY 7, 2020 COUNTERCLAIM (Romspen).pdf, pages 9 – 11, paragraphs 37-39

¹⁰ MAY 7, 2020 COUNTERCLAIM (Romspen).pdf, pages 12, paragraph 47

2. Scope

2.1. Scope

11. As of the date of this report, we have conducted a preliminary review of the documents provided which includes the following:
 - a. Chapter 11 Trustee's Emergency Motion to Limit Romspen Mortgage Limited Partnership's Credit Bid (September 15, 2020 Emergency Motion – Trustee);
 - b. the August 20, 2020 Plaintiff's Original Complaint and Incorporated Objection to Proof of Claim of Romspen Mortgage Limited Partnership of Austin Glass & Mirror, Inc, ACM Services, LLC, Koetter Fire Protection of Austin, LLC, Capital Industries, LLC, Hill Country Electric Supply, LP, Lyle America, Inc d/b/a Glass.com of Illinois, Summer Legacy, LLC, Texas Air Industries, LLC, Ferguson Enterprises, LLC, American Builders & Contractors Supply Co, Inc d/b/a ABC Supply Co, Inc and Panache.
 - c. February 1, 2018 Commitment Letter
 - d. The April 19, 2018 Final Budget Review of BTY (Romspen)
 - e. May 12, 2020 Statement of Claim of the Dan White Family Trust;
 - f. May 12, 2020 Statement of Claim of Eco Industrial;
 - g. March 31, 2020 Statement of Claim in Alberta Court of Queen's Bench Action 2003 06728;
 - h. May 7, 2020 Counterclaim of Lot 11 Gp Ltd, Lot 11 Limited Partnership, Eco-Industrial Business Park Inc, Absolute Energy Resources Inc, Absolute Environmental Waste Management Inc and Daniel Alexander White in Alberta Court of Queen's Bench Action 2003 06728;
 - i. the April 28, 2020 Affidavit of Dan White in Alberta Court of Queen's Bench Action 2003 06728;
 - j. the July 2, 2020 Affidavit of Dan White in Alberta Court of Queen's Bench Action 2003 06728;
 - k. the November 12, 2020 Affidavit with Dan White in Alberta Court of Queen's Bench Action 2003 06728 including Creditors Motion in Exhibit A.
12. This report is not intended for circulation or publication, nor is it to be reproduced for any other purpose than for the use of Client, Client's counsel (Dentons Canada LLP) and for litigation purposes, without our prior express written permission in each specific instance. Specifically, we acknowledge this report would be utilized in litigation in the matter of Romspen v Zen Garden et al. We do not assume any responsibility for losses suffered by any party as a result of circulation, publication, or reproduction of this report contrary to the Provisions of this paragraph.
13. We reserve the right, but will be under no obligation, to review this report, and if we consider it necessary, to revise our report in light of any information, which becomes known to us after the date of this report.
14. This work was not designed to identify all circumstances of inappropriate behavior or other irregularities, which may exist. For the purposes of this report, we have had to assume that the documents or other information disclosed to us are reliable and complete, unless otherwise stated.
15. Our report is privileged and confidential and was prepared at the request of the Counsel and Client. We express no opinion as to whether the information presented in this report is sufficient to establish civil or criminal wrongdoing, as only a court can determine these

matters.

16. This report has been based on information, documents, and explanations that have been provided to us and therefore the validity of any conclusions noted rely on the integrity of such information. Should any of the information provided to us not be factual or correct, or should we be asked to consider different information or assumptions, any conclusions set out in this report could be significantly different.
17. We have not investigated the accuracy of any third-party information, nor have we performed any investigative procedures to independently verify the accuracy of any third-party information.
18. For this investigation, Deloitte was not engaged to, and did not perform, a financial statement audit, review or compilation engagement for expressing an opinion on, or creating, historical financial statements in accordance with standards established by Chartered Professional Accountants Canada.

3. Assumptions

We have been requested by Counsel to assume the facts in the Emergency Order dated September 15, 2020 and the Creditors' Motion are accurate. In particular, in light of this direction we noted specific examples and citations upon which we are basing this report. Below we have excerpted paragraphs across both motions which are direct and clear about the positions of the Trustee and the Creditors.

3.1. Emergency Motion Dated September 15, 2020

19. *"In fact, the Trustee's own investigation confirms facts supporting serious allegations against Romspen, as detailed below."*¹¹
20. *"Since appointment, the Trustee and his professionals advanced a detailed investigation into Romspen's prepetition actions, liens, and claims, including obtaining thousands of pages of documents, interviewing witnesses, and serving subpoenas and turnover orders."*¹²
21. *"In justifying this relief, the Trustee's investigation supports the accusations against Romspen summarized below, among many other similar accusations."*¹³
22. *"The Trustee's investigation developed compelling evidence of Romspen intentionally depriving the Debtor of necessary third-party funding in violation of Romspen's own loan documents. This third-party funding made up a significant portion of the Project's planned budget, knocking an unexpected hole in the Debtor's promised funding during construction. No redevelopment with the complexity of the Project could reasonably survive such a shock. Predictably, neither did the Debtor."*¹⁴
23. *"Second, as detailed above and chronicled in the Trustee's upcoming adversary proceeding (as well as the Creditor Challenge Adversary and the White Adversary), the Trustee's investigation establishes a compelling record of Romspen's inequitable conduct including, among other schemes, depriving the Debtor of funding (both third-party PACE funding as well as advances under the Loan), leaving the Debtor undercapitalized and the Project underfunded, and forcing the Debtor's default with vendors, contractors, creditors, and ultimately Romspen."*¹⁵
24. *"In addition, the investigation strongly suggests Romspen wielded extraordinary control over the Project and the Debtor, acting not as a third-party, arm's length lender, but as the Debtor's non-statutory insider with the fiduciary duties and heightened scrutiny required by such a relationship. In finding cause to limit credit bidding rights, the in re CS Mining, LLC court also relied on the secured creditor's close relationship to the debtor (the equivalent of an insider). Id. at 283-84."*¹⁶

¹¹ SEPTEMBER 15 2020 EMERGENCY MOTION – TRUSTEE (Romspen).PDF pg. 8, paragraph 27

¹² SEPTEMBER 15 2020 EMERGENCY MOTION – TRUSTEE (Romspen).PDF pg. 8, paragraph 30

¹³ SEPTEMBER 15 2020 EMERGENCY MOTION – TRUSTEE (Romspen).PDF pg. 9, 10, paragraph 31

¹⁴ SEPTEMBER 15 2020 EMERGENCY MOTION – TRUSTEE (Romspen).PDF pg. 11, paragraph 36

¹⁵ SEPTEMBER 15 2020 EMERGENCY MOTION – TRUSTEE (Romspen).PDF pg. 22, 23, paragraph 73

¹⁶ SEPTEMBER 15 2020 EMERGENCY MOTION – TRUSTEE (Romspen).PDF pg. 22, 23, paragraph 74

3.2. Creditors Motion: Plaintiffs' Original Complaint and Incorporated Objection to Proof of Claim of Romspen Mortgage Limited Partnership

25. "The Plaintiffs are aware of several allegations of serious misconduct on the part of Romspen in connection with the Project. These allegations were included in a lawsuit filed against Romspen in Travis County, Texas on October 17, 2019. While the Plaintiffs have not each independently verified the allegations in the lawsuit, these allegations, if proven, would support the disallowance of a material portion of Romspen's claim. Further, these allegations, if proven would support the equitable subordination of Romspen's claim and liens to those of the Plaintiffs."¹⁷
26. "Romspen did not act merely as a commercial lender on the Project. Instead Romspen imposed itself as a developer exercising excessive direct control over the Project, not to protect its security interests and the repayment of its advances, but to wrest ownership of the Project from the Debtor."¹⁸
27. "Romspen's overreach included negotiating the key contracts with Panache and others, conditioning the funding of draw requests upon exercising excessive control over Panache and the Project, placing another general contractor on-site at the Project to observe, monitor, and control the Project, and involving itself in such matters as directly negotiating with suppliers and subcontractors, attempting to control leasing operations and decisions, and influencing zoning matters."¹⁹
28. "In Texas, an existing mortgagee must provide its written consent in order for the property to be eligible for the TX-PACE program. Lenders typically are supportive of PACE funding because it increases a borrower's ability to repay and it increases the value of the collateral which, in turn, lowers the loan to value ratio. Pursuant to Section 5.13(c)(iii) of the Loan agreement, Defendant expressly agreed that a PACE loan would be a permitted Encumbrance to title. In October 2018, the Debtor secured a commitment from a lender to fund PACE financing on the Project in the sum of \$25 million contingent on written consent from Romspen."²⁰
29. "In August of 2019, Romspen informed the Debtor it would only advance a maximum of \$102 million of the funds despite the \$125 million advance limit of the Note."²¹
30. The Creditor's Motion of Romspen's fraudulent conduct resulting in loss of funds and leading to construction delays is consistent with Emergency Motion filed by the Trustee in paragraph 20 above. "Romspen engaged in conduct to fraudulently induce the Debtor to enter into the Loan Documents. Romspen caused the Debtor to sustain damages, including, but not limited to, the potential loss substantial equity already invested; the loss funds to cover draws that Romspen failed to timely fund; construction delays caused by the failure to timely pay suppliers and subcontractors; increased interest charges; improper loan fees; and damage to the Debtor's image, brand and reputation."²²

¹⁷ NOVEMBER 13 2020 AFFIDAVIT 3 - WHITE (Romspen) (002).PDF – Creditors Motion - Exhibit A, page 6, paragraph 21

¹⁸ NOVEMBER 13 2020 AFFIDAVIT 3 - WHITE (Romspen) (002).PDF – Creditors Motion - Exhibit A, page 7, paragraph 24

¹⁹ NOVEMBER 13 2020 AFFIDAVIT 3 - WHITE (Romspen) (002).PDF – Creditors Motion - Exhibit A, page 7, paragraph 25

²⁰ NOVEMBER 13 2020 AFFIDAVIT 3 - WHITE (Romspen) (002).PDF – Creditors Motion - Exhibit A, page 11, paragraph 42

²¹ NOVEMBER 13 2020 AFFIDAVIT 3 - WHITE (Romspen) (002).PDF – Creditors Motion - Exhibit A, page 11, paragraph 45

²² NOVEMBER 13 2020 AFFIDAVIT 3 - WHITE (Romspen) (002).PDF – Creditors Motion - Exhibit A, page 12, paragraph 49

3.3. Observations of Emergency Order and Creditors Motion

31. The Trustee has conducted his own investigation which involves gathering of and analyzing evidence sources including documents and interviews.
32. The Creditors Motion of allegations of misconduct by Romspen is consistent with the Trustee's findings based on the Trustee's own investigation conducted.
33. The Creditor's Motion allegations regarding the level of control that Romspen exercised over the direct project is consistent with the Trustee's findings based on the Trustee's own investigation conducted.

4. Findings and Conclusion

4.1. Preliminary Findings

34. Further to the above details noted in both the Trustee Emergency Order and Creditors' motion, we have reviewed February 1, 2018 Commitment Letter signed by Romspen that requests additional documents to support and satisfy the lender of advancements of more than \$100,000,000 USD.
35. Loan amounts:
 - a. "Under a separate loan (Lender's loan #8212), lender has advanced to date approximately CAD \$31,710,000 (\$25,710,468 USD²³) to Lot 11 LP, guaranteed by, among others, the Borrower. The Lender may advance an additional amount of (the \$CAD equivalent of) approximately US \$3.0 million between the date of this letter and closing loan modification."²⁴
 - b. "Lender will make up to \$63,000,000 USD"²⁵
 - c. "Approximately US \$8,500,000 as an interest reserve and property tax escrow to be included in the Project Budget."²⁶
 - d. "Approximately US \$2,500,000 to pay Lender's fee on loan."²⁷
36. The sum of the loan amounts total at least \$102 million USD available for Zen Garden.
37. The February 1, 2018 agreement requires security to satisfy the lender in order for funds of up to \$125 million USD to become available. The loan agreement specifically states, "Loan Agreement/Promissory Note in a principal amount of up to \$125,000,000."
38. The Romspen Mortgage, LP Final budget review from April 18, 2018 indicates "\$127,998,570 (including \$25 million for PACE) is the total project budget amount. The lender has clarified that the intent is to cap the loan commitment amount to approximately \$100,000,000".
39. There is an inconsistency in the maximum loan amount to be provided by Romspen. February 1, 2018 loan agreement references up to \$125 million USD where as the April 18, 2018 budget review references a maximum of \$100 million USD.

4.2. Preliminary Conclusion

40. Based on a preliminary review of documents received, in particular the September 15, 2020 Emergency Order by the Trustee, we have relied on the assumptions and facts uncovered by the Trustee with respect to the allegations of misconduct on the part of Romspen and through association Adam Zarafshani. It is our view that the aforementioned information and assumptions, are consistent with indicators of fraud being present. The final conclusion of fraud is a legal determination by the trier of fact.

²³ USD dollar converted at average rate of \$0.8108 as per Royal Bank of Canada historical rate at February 1, 2018.

²⁴ ZEN 040 FEBRUARY 1, 2018 COMMITMENT LETTER - ROMSPEN (Romspen).PDF, page 2

²⁵ ZEN 040 FEBRUARY 1, 2018 COMMITMENT LETTER - ROMSPEN (Romspen).PDF, page 2

²⁶ ZEN 040 FEBRUARY 1, 2018 COMMITMENT LETTER - ROMSPEN (Romspen).PDF, page 2

²⁷ ZEN 040 FEBRUARY 1, 2018 COMMITMENT LETTER - ROMSPEN (Romspen).PDF, page 2

41. Unfortunately, we have not been able to conduct our own analysis and quantification of the alleged fraud as we have not been granted access to the Trustees investigation report, underlying documents nor do we have access to these documents that would be of particular importance in this matter (e.g. Zen Garden bank records, financial records, Zen Garden corporate and parties acting on behalf of Zen Garden communications).
42. In order for us to conduct a thorough forensic investigation to independently corroborate the significant findings in the Emergency Motion by the Trustee, the Creditor Motion filed, the Commitment Letter Dated February 1, 2018 and the BTY Monitoring Report from April 2018, we require additional information including that listed in Appendix A.

Appendix A

1. Original application request to Romspen for loan in early 2018.
2. Construction loan agreement from Romspen to 3443 Zen Garden LP 2018 for \$125,000,000 USD.
3. Bank statements from Romspen and supporting documentation such as wire instructions, EFTs and checks related to the depositing of all related loan proceeds in-connection with the \$125,000,000 USD agreement.
4. Bank Statements from Romspen regarding the status of the loan, balance and details of any wire instructions once the agreement was finalized between 3443 Zen Garden LP and Romspen.
5. Request for approval from 3443 Zen Garden to Romspen Supplemental loan agreement (known as "PACE Loan") for additional funding of \$25,000,000 USD.
6. Documentation that demonstrates Zen Garden's repeated requests for the PACE loan approval from Romspen.
7. Documents indicating CleanFund's commitment to provide PACE financing on the Project in the principal sum of \$25,000,000 USD.
8. Construction Contract that Romspen negotiated with Panache allegedly dictating Zen Garden's principal business relation in developing the Project.
9. Authorization documents sent to Romspen in September 2018 and November 2018 for Romspen execution to advance closing the CleanFund loan.
10. Progress reports for project detailing the status of project, milestones, schedule of payment and updates from contractors.
11. Communications Romspen as to the lack of PACE funding's negative impact on the Project by suppliers, vendors, contractors and financing establishments.
12. Communication from Romspen on March 1, 2019 to consider a different PACE lender.
13. Communication from Romspen in mid-March 2019 that it would not consent to PACE lending without modification of the Loan Agreement.
14. Communication from Romspen withholding approval for the PACE lender Greenworks Lending.
15. Development plan budgets and funding model and draw schedule of funds to be received.
16. Letter dated on or about August 16, 2019 about how Romspen would only disburse a maximum of approximately \$102 million USD under the Loan's promised \$125 million USD face amount.
17. All copies of draw requests from 3443 Zen Garden LP to Romspen for the period of the loan agreements with Romspen.

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18. Formal notice of Romspen's defaults under the Loan Documents provided by Zen Garden on October 9, 2019.
19. Communication of Romspen refusing to continue funding the Loan and formally declaring an event of default.
20. Zen Garden financial statements for the period including the receipt of loans received.
21. Statements for all Zen Garden bank accounts relating including, but not limited to, accounts for receipt of loan funds and disbursement of contractor / project fees.
22. Zen Garden general ledger beginning with the period of the earliest loan received from Romspen.
23. Copies of invoices, statements and payments to contractors involved in the Austin Development project including those statements with Panche.
24. Corporate emails from Zen Garden that relate to the loan, Romspen, Adam Zarafshani, Amanda Woodham , any Zen Garden employees and any other third parties that may have been involved in facilitating the movement of loan proceeds, at the discretion of Mr. Zarafshani.
25. The original loan application to Romspen, any major changes or amendments to that application over time, and documentation that supports the receipt of loan funds.
26. Draft and or Final Construction Contract between Panache Development & Construction, Inc. and 3443 Zen Garden Limited Partnership, LLC.
27. Loan agreement, lender's loan #8212, entered between Lot 11 Limited Partnership and Romspen.
28. Supporting documentation for the payment advances from Romspen totaling approximately CAD\$31,710,000 to Lot 11 Limited Partnership.
29. Documentation regarding approvals, advances, full costs budgets, cost-to-complete schedules, tenant-ready condition reports, and other supporting documentation that relates to and regarding the advancement of the following loan tranches:
 - a. Infrastructure Tranche.
 - b. Building F, H, and J Tranche.
30. Supporting documentation including payments, budget schedules, earmarking of funds in accounts, etc. for the US\$8,500,000 budgeted for interest reserve and property tax escrow, US\$2,500,000 Lender's fee on the loan, and amounts to pay costs of the transaction.